IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3124 OF 2004

IN

SUIT NO.3064 of 2004

Smt.Gopi Tarachand Advani. ... Plaintiff.

vs.

Kalavanti S. Advani and others. ... Defendants.

Mr.Ravi Kadam , A.G. With Pratik Seksaria i/b. Nankani & Associates for Plaintiff.

Mr.A.K.Abhyankar with Hitesh Dabhi i/b. Haresh Jagtiani & Associates, for Defendants 1 and 2.

CORAM: D.K.DESHMUKH,J.

DATED: 1st April,2005

P.C.:-

1. This is a Notice of Motion taken out by the plaintiff. The plaintiff by prayer clause (a) of this Notice of Motion seeks order of temporary injunction restraining the defendants from registering the consent decree dated

22nd February,1977, passed in suit no.447 of 1965, and by prayer clause (b), the plaintiff seeks an order of appointing the Receiver on the properties described in Exhibit A and H therein.

2. In so far as prayer clause (a) is concerned, I have been given copy of the Chamber summons no.66 of 2005 which is taken out by the plaintiff herself wherein by prayer clause (b) of that chamber summons, the relief identical to one which is claimed by prayer clause (a) of this Notice of Motion, has been claimed. In that chamber summons, ad-interim relief in terms of prayer clause (b) has already been granted by order dated 31.1.2005, and therefore, in my opinion, no order in terms of prayer clause (a) of this Notice of Motion is called for.

3. So far as the appointment of receiver on the property described in Exhibit A is concerned, the plaintiff claims to be the owner of the property. In the alternative, even if it is assumed that her son was the owner of this property, she will have 1/4th share in the property. She claims that the defendants are trying to usurp the property and therefore, Receiver should be appointed. In the Testamentary proceedings taken out by the defendants, a Receiver was appointed. It appears that there was an order of temporary injunction passed in the Testamentary proceedings. On the face of allegations that certain actions were taken by the defendants in breach of that temporary injunction, proceedings were taken against the defendants for having committed

breach of the order passed by the Court. That order is presently under challenge before the appeal Court in Appeal no.562 of 2004. It is common ground before me that the order appointing the Receiver on the property described at Exhibit A has been vacated by the Appeal Court. The Appeal Court has made the order for maintaining Status-quo. The appeal Court has also permitted the defendants to carry out repairs subject to terms and conditions which are mentioned in the order passed by the Appeal Court dated 5th November,2004. In my opinion, as the purpose behind making the interim order by the Appeal Court was to protect the property, and as in the opinion of the Appeal Court, interim order made by it is adequate to protect the property and interest of both the parties involved, in the face of the order passed by the Appeal Court, it will not be appropriate for this Court to appoint the Receiver. Therefore, the request of the plaintiff for appointment of Receiver on the property described at Exhibit A cannot be granted at this juncture, in view of the fact that the order passed by the Appeal Court is operating in relation to the same property. However, the plaintiff shall be at liberty to renew its request for appointment of the receiver in future, depending on the orders that may be passed in the Appeal which is pending before the Appeal Court.

4. So far as the request for appointment of receiver on the property described at Exhibit H is concerned, the description of the property at Exhibit H is at Item no.4 which reads as under:-

"Shares of Hongkong Investment Co.Pvt.Ltd., owner of

immoveable property situated at “Aforamento Oiterial” or “Aforamento Oiterio Bazaar or Bazaar”, now bearing Survey nos.104, 105/0 and 106/0 (also referred to as 106/1) ademasuring approximately 10,71,225 square meters situate, lying and being at Telaulim Santa Anna in Village Panchayat of Santa Anna, Gram Panchayat Area of Curca, Bambolim, Telaulim, Sub-District of Ilhas, District Goa in the Union Territory of India.”

The averments in relation to this property are contained in paragraph 18 of the plaint which reads as under:-

“ One of the Companies which was fully owned by the deceased and had gone into liquidation owns hundred of acres of land at Goa as described in the Schedule at Exhibit H. The properties described in Exhibit “H” hereto form part of the estate of the deceased. The said property described in Exhibit-A hereto doe not form part of the estate of the deceased and belongs to the Plaintiff as submitted hereinafter. The Plaintiff and the Defendants are the only heirs of the deceased as on intestacy.”

According to these averments, the Company was under liquidation. The defendants in their reply in paragraph 17 have stated thus:-

“ With reference to para 18 of the plaint, I say that the

> plaintiff has absolutely no claim whatsoever to any of the properties referred to therein. At any rate, if the plaintiff in claiming as legal heir, of the late Shyamsunder Advani, then that issue will be decided in T & I.J. Suit no.4 of 2004. As regards the said property it is for the first time that the plaintiff is staking a claim thereto in her own right whereas in affidavits filed by her in the Testamentary proceedings, she has admitted that the said property was the exclusive property of my late father during his lifetime and now constitutes a part of his estate. I further say that the property mentioned in Exh."H" is in liquidation and the property vest with the official liquidator."

According to the defendants, thus, the company is under the management of the Official Liquidator. The learned Counsel for plaintiff submits that even if the company is under the management of the Official Liquidator, a receiver can be appointed on the shares held by the deceased in that company. It is a common ground that the shares stand in the name of the deceased. It is nobody's case before me that the defendants have applied with the official liquidator or the Board of Directors of that Company for getting the names of defendants substituted in place of the deceased. Unless the shares are transferred in the name of the defendants in the record of the company, it would not be possible for the defendants to transfer the shares. In these circumstances, therefore, in the absence of proper averments, in my opinion, it would not be appropriate to

pass any interim order in relation to the property described at Item no.4 at Exhibit H. For all these reasons, therefore, the Notice of Motion is disposed of.

1.4.2005 ---